

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RICKY DICKERSON,

Petitioner,

-vs-

ORDER

No. 09-CV-0175M

H.D. GRAHAM,
Superintendent of Auburn Correctional Facility,

Respondent.

Petitioner, upon being granted an extension of time to file a reply to Respondent's Answer to the Petition and Memorandum of Law, and an amended petition [9 and 10],¹ has filed an Amended Petition [11]. The Amended Petition "incorporates the fact, legal issues and arguments set forth in [petitioner's] habeas corpus petition . . . and adapts and relate them back as fully set forth in the Amended Petition." *Id.*, ¶3. The Court notes that the original Petition raised four grounds for relief: (1) the improper admission into evidence of the grand jury testimony of two witnesses who were unavailable at trial; (2) the improper use of peremptory challenges to excuse two minority jurors; (3) ineffective assistance of trial counsel; and (4) the verdict was against the weight of evidence and the sentence was harsh and excessive. [1], ¶12. The Amended Petition addresses and further expounds upon only two of the four grounds originally raised: improper admission of the grand jury testimony of two witnesses, and ineffective assistance of counsel. I presumes that Petitioner did not intend to withdraw the other two grounds raised in the original Petition and therefore directs that the operative petition in this

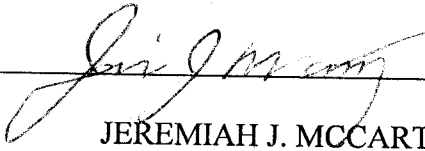
¹

Bracketed references are to the CM/ECF docket entries.

matter is both the Petition [1] and Amended Petition [11].

Accordingly, Respondent shall file and serve an answer and memorandum of law in response to the Amended Petition no later than **January 19, 2010**. Respondent may, if he chooses, incorporate by reference any part of the Answer and Memorandum of Law filed and served in response to the original Petition. If Petitioner chooses to file and serve a reply to the Answer and Memorandum of Law filed in response to the Amended Petition, he shall file the response by **February 18, 2009**.

IT IS SO ORDERED.


JEREMIAH J. MCCARTHY
United States Magistrate Judge

DATED: December 11, 2009
Buffalo, New York.